

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



JULES KIMMETT,)	
)	
Charging Party,)	Case No. LA-FS-3
)	
v.)	PERB Order No. Ad-167
)	
LOS ANGELES CITY & COUNTY SCHOOL)	December 18, 1987
EMPLOYEES UNION, LOCAL 99, SEIU,)	
AFL-CIO,)	
Respondent.)	
_____)	

Appearance; Jules Kimmett, on his own behalf.

Before Craib, Shank and Cordoba, Members.

DECISION

CRAIB, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal from the dismissal of a financial statement complaint filed by Jules Kimmett. For the reasons set forth below, we affirm the dismissal of the complaint.

PROCEDURAL HISTORY

On June 3, 1987, Kimmett filed a financial statement complaint, contending that the financial report form filed by Los Angeles City & County School Employees Union, Local 99, SEIU, AFL-CIO (Local 99) failed to contain the signatures of two officers of the union, as required by PERB Regulation 32125(a).¹ On June 23, PERB's Los Angeles regional director

¹PERB Regulations are codified at California Administrative Code, title 8, part III, section 31001 et seq. Regulation 32125(a) states:

informed Kimmett by letter that, while his complaint had merit when filed, Local 99 had since complied with Regulation 32125(a) by resubmitting the financial report form with the appropriate signatures. Consequently, the regional director stated that he would close the case unless Kimmett believed further action was necessary and indicated what that action should be and why. In response, on June 29, Kimmett filed a "Declaration of Facts-Bill of Particulars," which, in essence, alleges that the financial statement is fraudulent.

On July 17, 1987, the regional director wrote to Kimmett and explained that bare assertions of fraud are insufficient to state a prima facie case of noncompliance with Regulation 32125(a). In that letter, the regional director extended to Kimmett the first of two opportunities² to submit an amended complaint alleging facts which, if true, would indicate fraud had occurred. The regional director found Kimmett's two responses insufficient and dismissed the complaint on August 27, 1987. In his first response, Kimmett declared that he was

Under EERA [Educational Employment Relations Act], pursuant to Government Code section 3546.5, every recognized or certified employee organization shall keep an adequate itemized record of its financial transactions. Within 60 days after the end of its fiscal year, every recognized or certified employee organization shall file with the regional office a detailed written report thereof, signed and certified as to accuracy by its president and treasurer or corresponding principal officers.

²The second was by letter of August 7, 1987.

prepared to testify under penalty of perjury as to the accuracy of the assertions in his June 29 submission to the regional director. The second response reiterated that he was prepared to testify in support of his allegations, stated that he did not witness the signing of the financial report form, and asserted that a prima facie case of forgery is apparent from a comparison of the various financial report forms submitted by Local 99.

DISCUSSION

Kimmett's "appeal" consists solely of the submission of a copy of the financial report form originally submitted to PERB, i.e., the one containing only one of the signatures required by Regulation 32125(a).

Regulation 32360 states:

(a) An appeal may be filed with the Board itself from any administrative decision, except as noted in section 32380.

(b) An original and 5 copies of the appeal shall be filed with the Board itself in the headquarters office within 10 days following the date of service of the decision or letter of determination.

(c) The appeal must be in writing and must state the specific issue(s) of procedure, fact, law or rationale that is appealed and state the grounds for the appeal.

(d) Service and proof of service of the appeal pursuant to section 32140 are required.

On its face, Kimmett's "appeal" fails to comply with Regulation 32360(c), in that it fails to identify either the issues being

appealed or the grounds for the appeal.³ Consequently, this filing is insufficient to constitute an appeal in accordance with Regulation 32360 and we therefore reject it.

Our rejection of Kimmett's appeal is consistent with the well-established principle that the Board will consider on appeal only those issues properly raised. In American Federation of State, County and Municipal Employees (Cupp) (1987) PERB Decision No. 612-S, the Board held that the portion of Cupp's appeal which merely chastized the regional attorney did not specify any errors by the regional attorney and thus did not raise issues requiring consideration. On two occasions the Board has rejected appeals which simply asserted in summary fashion that the decision below was incorrect. In San Diego Community College District (1983) PERB Decision No. 368, the California Teachers Association, in response to the District's exceptions to an administrative law judge's proposed decision, included an assertion that it should have prevailed on all allegations and incorporated by reference its post-hearing brief. The Board found this lacked sufficient specificity to be considered as a statement of exceptions under Regulations 32310 and 32300. In Los Angeles Community College District (1983) PERB Decision No. 309, an earlier case filed by Kimmett involving an appeal of a dismissal, the Board found Kimmett's mere assertion that a prima facie case was stated to be

³We note that the requirements of Regulation 32360(c) were enumerated in the regional director's letter of August 27,

insufficient to constitute an appeal (under then Regulation 32630(b)). Similarly, the Board normally will not consider any findings which are not specifically excepted to in an appeal of a proposed decision of a PERB hearing officer or administrative law judge. See, e.g., Morgan Hill Unified School District (1985) PERB Decision No. 554, Brawley Union High School District (1982) PERB Decision No. 266.

In sum, we will affirm the regional director's dismissal of Kimmett's financial statement complaint because the failure to comply with Regulation 32360 requires that the "appeal" be rejected. The "appeal" simply fails to raise any issues for our review, therefore there is nothing to consider.

ORDER

The financial statement complaint in Case No. LA-FS-3 is hereby DISMISSED.

Members Shank and Cordoba joined in this Decision.